



98TH GENERAL ASSEMBLY

State of Illinois

2013 and 2014

SB3023

Introduced 2/7/2014, by Sen. John G. Mulroe

SYNOPSIS AS INTRODUCED:

770 ILCS 60/1
770 ILCS 60/21

from Ch. 82, par. 1
from Ch. 82, par. 21

Amends the Mechanics Lien Act. Provides that an agreement to subordinate a lien under the Act where the agreement is in anticipation of and in consideration for the awarding of a contract or subcontract, either express or implied, to perform work or supply materials for an improvement upon real property is against public policy and unenforceable. Deletes language providing that certain subordination provisions of contracts is not binding on the subcontractor unless set forth in its entirety in writing in the contract between the contractor and subcontractor or material supplier. Makes corresponding changes.

LRB098 17607 HEP 52719 b

1 AN ACT concerning civil law.

2 **Be it enacted by the People of the State of Illinois,**
3 **represented in the General Assembly:**

4 Section 5. The Mechanics Lien Act is amended by changing
5 Sections 1 and 21 as follows:

6 (770 ILCS 60/1) (from Ch. 82, par. 1)

7 Sec. 1. Contractor defined; amount of lien; waiver of lien;
8 attachment of lien; agreement to waive; when not enforceable.

9 (a) Any person who shall by any contract or contracts,
10 express or implied, or partly expressed or implied, with the
11 owner of a lot or tract of land, or with one whom the owner has
12 authorized or knowingly permitted to contract, to improve the
13 lot or tract of land or for the purpose of improving the tract
14 of land, or to manage a structure under construction thereon,
15 is known under this Act as a contractor and has a lien upon the
16 whole of such lot or tract of land and upon adjoining or
17 adjacent lots or tracts of land of such owner constituting the
18 same premises and occupied or used in connection with such lot
19 or tract of land as a place of residence or business; and in
20 case the contract relates to 2 or more buildings, on 2 or more
21 lots or tracts of land, upon all such lots and tracts of land
22 and improvements thereon for the amount due to him or her for
23 the material, fixtures, apparatus, machinery, services or

1 labor, and interest at the rate of 10% per annum from the date
2 the same is due. This lien extends to an estate in fee, for
3 life, for years, or any other estate or any right of redemption
4 or other interest that the owner may have in the lot or tract
5 of land at the time of making such contract or may subsequently
6 acquire and this lien attaches as of the date of the contract.

7 (b) As used in subsection (a) of this Section, "improve"
8 means to furnish labor, services, material, fixtures,
9 apparatus or machinery, forms or form work in the process of
10 construction where cement, concrete or like material is used
11 for the purpose of or in the building, altering, repairing or
12 ornamenting any house or other building, walk or sidewalk,
13 whether the walk or sidewalk is on the land or bordering
14 thereon, driveway, fence or improvement or appurtenances to the
15 lot or tract of land or connected therewith, and upon, over or
16 under a sidewalk, street or alley adjoining; or fill, sod or
17 excavate such lot or tract of land, or do landscape work
18 thereon or therefor; or raise or lower any house thereon or
19 remove any house thereto, or remove any house or other
20 structure therefrom, or perform any services or incur any
21 expense as an architect, structural engineer, professional
22 engineer, land surveyor or property manager in, for or on a lot
23 or tract of land for any such purpose; or drill any water well
24 thereon; or furnish or perform labor or services as
25 superintendent, time keeper, mechanic, laborer or otherwise,
26 in the building, altering, repairing or ornamenting of the

1 same; or furnish material, fixtures, apparatus, machinery,
2 labor or services, forms or form work used in the process of
3 construction where concrete, cement or like material is used,
4 or drill any water well on the order of his agent, architect,
5 structural engineer or superintendent having charge of the
6 improvements, building, altering, repairing or ornamenting the
7 same.

8 (c) The taking of additional security by the contractor or
9 sub-contractor is not a waiver of any right of lien which he
10 may have by virtue of this Act, unless made a waiver by express
11 agreement of the parties and the waiver is not prohibited by
12 this Act.

13 (d) An agreement to waive any right to enforce or claim a
14 lien or an agreement to subordinate any lien under this Act
15 where the agreement is in anticipation of and in consideration
16 for the awarding of a contract or subcontract, either express
17 or implied, to perform work or supply materials for an
18 improvement upon real property is against public policy and
19 unenforceable. This Section does not prohibit release of lien
20 under subsection (b) of Section 35 of this Act ~~or prohibit~~
21 ~~subordination of the lien, except as provided in Section 21.~~

22 (Source: P.A. 94-627, eff. 1-1-06.)

23 (770 ILCS 60/21) (from Ch. 82, par. 21)

24 Sec. 21. Sub-contractor defined; lien of sub-contractor;
25 notice; size of type; service of notice; amount of lien;

1 default by contractor.

2 (a) Subject to the provisions of Section 5, every mechanic,
3 worker or other person who shall furnish any labor, services,
4 material, fixtures, apparatus or machinery, forms or form work
5 for the contractor, or shall furnish any material to be
6 employed in the process of construction as a means for
7 assisting in the erection of the building or improvement in
8 what is commonly termed form or form work where concrete,
9 cement or like material is used in whole or in part, shall be
10 known under this Act as a sub-contractor, and shall have a lien
11 for the value thereof, with interest on such amount from the
12 date the same is due, from the same time, on the same property
13 as provided for the contractor, and, also, as against the
14 creditors and assignees, and personal and legal
15 representatives of the contractor, on the material, fixtures,
16 apparatus or machinery furnished, and on the moneys or other
17 considerations due or to become due from the owner under the
18 original contract.

19 (b) If the legal effect of any contract between the owner
20 and contractor is that no lien or claim may be filed or
21 maintained by any one ~~and the waiver is not prohibited by this~~
22 ~~Act,~~ or that such contractor's lien shall be subordinated to
23 the interests of any other party, and the provision is not
24 prohibited by this Act, such provision shall be binding; but
25 the only admissible evidence thereof as against a subcontractor
26 or material supplier, shall be proof of actual notice thereof

1 to him or her before his or her contract is entered into. ~~Such~~
2 ~~subordination provision shall not be binding on the~~
3 ~~subcontractor unless set forth in its entirety in writing in~~
4 ~~the contract between the contractor and subcontractor or~~
5 ~~material supplier.~~

6 (c) It shall be the duty of each subcontractor who has
7 furnished, or is furnishing, labor, services, material,
8 fixtures, apparatus or machinery, forms or form work for an
9 existing owner-occupied single family residence, in order to
10 preserve his lien, to notify the occupant either personally or
11 by certified mail, return receipt requested, addressed to the
12 occupant or his agent of the residence within 60 days from his
13 first furnishing labor, services, material, fixtures,
14 apparatus or machinery, forms or form work, that he is
15 supplying labor, services, material, fixtures, apparatus or
16 machinery, forms or form work provided, however, that any
17 notice given after 60 days by the subcontractor shall preserve
18 his lien, but only to the extent that the owner has not been
19 prejudiced by payments made prior to receipt of the notice. The
20 notification shall include a warning to the owner that before
21 any payment is made to the contractor, the owner should receive
22 a waiver of lien executed by each subcontractor who has
23 furnished labor, services, material, fixtures, apparatus or
24 machinery, forms or form work.

25 The notice shall contain the name and address of the
26 subcontractor or material man, the date he started to work or

1 to deliver materials, the type of work done and to be done or
2 the type of materials delivered and to be delivered, and the
3 name of the contractor requesting the work. The notice shall
4 also contain the following warning:

5 "NOTICE TO OWNER

6 The subcontractor providing this notice has performed work
7 for or delivered material to your home improvement contractor.
8 These services or materials are being used in the improvements
9 to your residence and entitle the subcontractor to file a lien
10 against your residence if the services or materials are not
11 paid for by your home improvement contractor. A lien waiver
12 will be provided to your contractor when the subcontractor is
13 paid, and you are urged to request this waiver from your
14 contractor when paying for your home improvements."

15 Such warning shall be in at least 10 point bold face type.
16 For purposes of this Section, notice by certified mail is
17 considered served at the time of its mailing.

18 (d) In no case, except as hereinafter provided, shall the
19 owner be compelled to pay a greater sum for or on account of
20 the completion of such house, building or other improvement
21 than the price or sum stipulated in said original contract or
22 agreement, unless payment be made to the contractor or to his
23 order, in violation of the rights and interests of the persons
24 intended to be benefited by this Act: Provided, if it shall
25 appear to the court that the owner and contractor fraudulently,
26 and for the purpose of defrauding sub-contractors fixed an

1 unreasonably low price in their original contract for the
2 erection or repairing of such house, building or other
3 improvement, then the court shall ascertain how much of a
4 difference exists between a fair price for labor, services,
5 material, fixtures, apparatus or machinery, forms or form work
6 used in said house, building or other improvement, and the sum
7 named in said original contract, and said difference shall be
8 considered a part of the contract and be subject to a lien. But
9 where the contractor's statement, made as provided in Section
10 5, shows the amount to be paid to the sub-contractor, or party
11 furnishing material, or the sub-contractor's statement, made
12 pursuant to Section 22, shows the amount to become due for
13 material; or notice is given to the owner, as provided in
14 Sections 24 and 25, and thereafter such sub-contract shall be
15 performed, or material to the value of the amount named in such
16 statements or notice, shall be prepared for use and delivery,
17 or delivered without written protest on the part of the owner
18 previous to such performance or delivery, or preparation for
19 delivery, then, and in any of such cases, such sub-contractor
20 or party furnishing or preparing material, regardless of the
21 price named in the original contract, shall have a lien
22 therefor to the extent of the amount named in such statements
23 or notice. In case of default or abandonment by the contractor,
24 the sub-contractor or party furnishing material, shall have and
25 may enforce his lien to the same extent and in the same manner
26 that the contractor may under conditions that arise as provided

1 for in Section 4 of this Act, and shall have and may exercise
2 the same rights as are therein provided for the contractor.

3 (e) Any provision in a contract, agreement, or
4 understanding, when payment from a contractor to a
5 subcontractor or supplier is conditioned upon receipt of the
6 payment from any other party including a private or public
7 owner, shall not be a defense by the party responsible for
8 payment to a claim brought under Section 21, 22, 23, or 28 of
9 this Act against the party. For the purpose of this Section,
10 "contractor" also includes subcontractor or supplier. The
11 provisions of Public Act 87-1180 shall be construed as
12 declarative of existing law and not as a new enactment.

13 (Source: P.A. 94-615, eff. 1-1-06; 94-627, eff. 1-1-06.)